

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 24, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-27 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2001]:
- 5 **ARTICLE 27. DESIGN-BUILD PUBLIC WORKS PROJECTS**
- 6 **Chapter 1. General Provisions**
- 7 **Sec. 1. Notwithstanding IC 4-13.6-5-11, IC 5-16-2-2, and**
- 8 **IC 36-1-12-16, a design-build contract awarded as provided in this**
- 9 **chapter is valid and enforceable.**
- 10 **Chapter 2. Definitions**
- 11 **Sec. 1. The definitions in this chapter apply throughout this**
- 12 **article.**
- 13 **Sec. 2. "Construction services" means services provided under**
- 14 **a design-build contract that are not design services.**
- 15 **Sec. 3. "Design-build contract" means a contract between a**
- 16 **public agency and a design-builder to furnish:**
- 17 **(1) architectural, engineering, and related design services as**
- 18 **required for a given public project; and**
- 19 **(2) labor, materials, and other construction services for the**
- 20 **same public project.**
- 21 **Sec. 4. "Design-builder" means a person that furnishes the**
- 22 **necessary design and construction services under a design-build**
- 23 **contract, whether by itself or through contractual arrangements.**
- 24 **Sec. 5. "Design criteria developer" means a qualified person**
- 25 **registered under Indiana law that is responsible for preparing the**
- 26 **design criteria package for a specific design-build project.**

1 **Sec. 6. "Design criteria package"** means a set of documents that
 2 provides sufficient information to permit an offeror to prepare a
 3 response to a public agency's request for proposals.

4 **Sec. 7. "Design services"** means those services that are:

- 5 (1) within the scope of practice specified by IC 25-4 for
- 6 architecture or IC 25-31 for professional engineering; or
- 7 (2) performed by a registered architect or professional
- 8 engineer in connection with the architect's or engineer's
- 9 professional employment or practice.

10 **Sec. 8. "Offeror"** means a person who submits a proposal in
 11 response to a request for proposals.

12 **Sec. 9. "Person"** means an individual, a firm, a partnership, a
 13 limited liability company, a joint venture, an association, a
 14 corporation, or another legal entity.

15 **Sec. 10. "Proposal"** means an offer by a potential design-builder
 16 to enter into a design-build contract for a public project in
 17 response to a request for proposals.

18 **Sec. 11. (a) "Public agency"** means a state agency (as defined in
 19 IC 4-13-1-1) or a state educational institution (as defined in
 20 IC 20-12-0.5-1).

21 (b) The term does not include the Indiana department of
 22 transportation.

23 **Sec. 12. (a) "Public project"** means the process of designing,
 24 constructing, reconstructing, altering, or renovating a public
 25 building, an airport facility, or another structure or improvement
 26 that is paid for out of a public fund or out of a special assessment.

27 (b) The term includes any of the following:

- 28 (1) A building or structure leased by a public agency under a
- 29 lease containing an option to purchase.
- 30 (2) A public improvement to real property owned by a public
- 31 agency.

32 (c) The term does not include the process of designing,
 33 constructing, altering, or repairing a highway, street, or alley.

34 **Chapter 3. Design-Builder Qualifications**

35 **Sec. 1. At the time design services or construction services are**
 36 **to be provided under a design-build contract, a design-builder**
 37 **must:**

- 38 (1) be a person;
- 39 (2) employ persons; or
- 40 (3) have as a partner, member, joint venturer, or
- 41 subcontractor a person;

42 licensed, registered, certified, or otherwise qualified to provide the
 43 design services and construction services required to complete the
 44 public project and do business in Indiana.

45 **Sec. 2. A design-builder may contract with the public agency to**
 46 **provide design services and construction services that the**
 47 **design-builder is not itself licensed, registered, or otherwise**
 48 **qualified to perform if the design-builder provides the services**
 49 **through subcontracts with licensed, registered, or otherwise**
 50 **qualified persons in accordance with this article.**

1 **Sec. 3.** This article does not limit or eliminate the responsibility
 2 or liability owed by a person providing design services to the public
 3 agency or other third parties imposed by Indiana law.

4 **Chapter 4. Technical Review Committee**

5 **Sec. 1.** (a) Before entering into a design-build contract, a public
 6 agency must appoint a technical review committee of not fewer
 7 than three (3) individuals.

8 (b) The members of the technical review committee must
 9 include the following:

10 (1) A representative of the public agency.

11 (2) Any of the following:

12 (A) An architect registered under IC 25-4.

13 (B) A landscape architect registered under IC 25-4.

14 (C) A professional engineer registered under IC 25-31.

15 (c) A member of the technical review committee who is an
 16 architect, a landscape architect, or a professional engineer may be:

17 (1) an employee of the public agency; or

18 (2) an outside consultant retained by the public agency for the
 19 specific purpose of evaluating proposals submitted under this
 20 article.

21 (d) The design criteria developer may serve either as a full
 22 member of the committee or as a nonvoting adviser.

23 **Sec. 2.** (a) A member of the technical review committee may not
 24 submit a proposal for or furnish any design services or
 25 construction services under the design-build contract.

26 (b) The design-builder may not delegate or subcontract
 27 professional services or construction services under the
 28 design-build contract to a member of the technical review
 29 committee.

30 **Sec. 3** (a) The technical review committee shall do the following:

31 (1) Qualify potential design-builders as provided in IC 5-27-5.

32 (2) Rate and score qualitative proposals as provided in
 33 IC 5-27-6 and IC 5-27-7.

34 (b) The technical review committee may interview persons
 35 submitting proposals and conduct other business necessary to
 36 fulfill the purposes of this article.

37 **Sec. 4.** Except for interviews of persons submitting proposals,
 38 meetings of the technical review committee shall be open to the
 39 public and subject to IC 5-14-1.5.

40 **Chapter 5. Request for Qualifications**

41 **Sec. 1.** When design-build services are considered for a public
 42 project, a public agency shall publish a notice of a request for
 43 qualifications under IC 5-3-1.

44 **Sec. 2.** Each notice provided under section 1 of this chapter must
 45 provide the following information:

46 (1) The location of the public project.

47 (2) A general description of the public project.

48 (3) A description of areas of qualification required for
 49 performance of the work, such as experience, management
 50 resources, and financial capability.

(4) The basis upon which the most qualified offerors will be determined.

(5) Any other requirements for the submission of statements of qualifications.

Sec. 3. (a) A potential design-builder submitting proposals for the public project must submit a verified statement of qualifications setting forth the qualifications of the potential design-builder and provide the other information required by the request for qualifications.

(b) The verified statement of qualifications required under this section shall include the following:

(1) A listing of all the contractors that participate financially as part of the design-builder.

(2) A statement that the members of the design-builder have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(3) A statement that the members of the design-builder have the licenses, registrations, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(4) A statement that the design-builder has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(5) Information regarding any prior serious or willful violation of the Indiana Occupational Safety and Health Act or the Federal Occupational Safety and Health Act of 1970 settled as ordered against any contractor or member of the potential design-builder.

(6) Information concerning the debarment, disqualification, or removal of the design-builder or any of its contractors or members from a federal, state, or local government public works project.

(7) Information concerning the bankruptcy or receivership of any member of the design-builder.

(8) An affirmation that the design-builder and all of its contractors and subcontractors providing construction services will comply with the provisions of IC 5-16-7.

Sec. 4. The technical review committee shall determine the relative ability of each person to perform the services required for each project. Determination of ability shall include consideration of any of the following:

(1) The design-builder's experience.

(2) The design-builder's financial and bonding capacity.

(3) The design-builder's managerial resources.

(4) The design-builder's safety record.

(5) The design-builder's past performance and capacity to

perform.

(6) The design-builder's ability to complete the work in a timely and satisfactory manner.

(7) Other selection criteria set forth or verified in the request for qualifications.

Sec. 5. The technical review committee may not consider cost related or price related evaluation factors.

Sec. 6. (a) The technical review committee shall select at least three (3) and not more than five (5) potential design-builders considered to be the most highly qualified to perform the required services. However, the technical review committee may submit fewer than three (3) design-builders if all members of the technical review committee sign a written statement that fewer than three (3) proposals responsive to the request for qualifications were received from qualified design-builders.

(b) The technical review committee shall report the selection of qualified design-builders to the public agency.

Chapter 6. Request for Proposals

Sec. 1. The public agency shall issue a request for proposals to the potential design-builders selected under IC 5-27-5-6. Each request for proposals must contain a design criteria package.

Sec. 2. (a) The design criteria developer shall prepare the design criteria package.

(b) The design criteria developer may not submit a proposal or furnish design or construction services under the contract.

(c) The design-builder may not delegate or subcontract design services or construction services under the design-build contract to the design criteria developer.

Sec. 3. (a) The public agency shall determine the scope and level of detail required for the design criteria package.

(b) The design criteria package must specify the design criteria necessary to describe the public project, which may include, as appropriate, the following:

- (1) A legal description and survey of the site.
- (2) Interior space requirements.
- (3) Special material requirements.
- (4) Material quality standards.
- (5) Conceptual design criteria for the project.
- (6) Special equipment requirements.
- (7) Cost or budget estimates.
- (8) Quality assurance and quality control requirements.
- (9) Site development requirements.
- (10) Compliance with applicable codes and ordinances.
- (11) Permits and connections to utilities.
- (12) Requirements for storm water and roads.
- (13) Parking requirements.
- (14) Soil borings and geotechnical information or performance specifications.
- (15) Life cycle costing and energy consumption requirements.
- (16) Any other applicable requirements.

1 **Sec. 4. In addition to the design criteria package, a request for**
 2 **proposals must include the following:**

- 3 **(1) Instructions.**
- 4 **(2) Proposal forms.**
- 5 **(3) General and special conditions.**
- 6 **(4) The basis for evaluation of proposals, including a**
 7 **description of the selection criteria with the weight assigned**
 8 **to each criteria.**
- 9 **(5) Any other instructions, documents, or information**
 10 **relevant to the public project that the public agency considers**
 11 **relevant.**

12 **Sec. 5. The request for proposals must include the requirement**
 13 **that a proposal be submitted in two (2) packages, a qualitative**
 14 **proposal and a price proposal.**

15 **Chapter 7. Selection and Award**

16 **Sec. 1. A proposal in response to a request for proposals**
 17 **described in IC 5-27-6 must satisfy the following:**

- 18 **(1) The qualitative proposal and the price proposal must be**
 19 **submitted simultaneously in separately sealed and identified**
 20 **packages. The price proposal must remain sealed until opened**
 21 **in public under section 5 of this chapter.**
- 22 **(2) A proposal must identify each person with whom the**
 23 **offeror proposes to enter into subcontracts for primary design**
 24 **services and primary construction services under the**
 25 **design-build contract. The public agency may determine**
 26 **requirements under this section.**
- 27 **(3) The price proposal must:**
 - 28 **(A) contain one (1) lump sum cost of all design,**
 - 29 **construction engineering, inspection, and construction**
 - 30 **costs of the proposed project; and**
 - 31 **(B) establish a maximum cost of the design-build contract**
 - 32 **that will not be exceeded if the proposal is accepted**
 - 33 **without change.**
- 34 **(4) The qualitative proposal must include all documents,**
- 35 **information, and data requested in the request for proposals.**

36 **Sec. 2. (a) The public agency shall submit the qualitative**
 37 **proposals to the technical review committee.**

38 **(b) The public agency may require clarifications from an offeror**
 39 **to ensure conformance of proposals with the design criteria.**

40 **(c) The technical review committee may not consider a proposal**
 41 **until the design criteria developer provides its professional opinion**
 42 **that the proposal conforms with the design criteria.**

43 **Sec. 3. (a) The technical review committee shall review the**
 44 **qualitative proposals and establish a score for each qualitative**
 45 **proposal based on the factors, weighting, and process identified in**
 46 **the request for proposals.**

47 **(b) The technical review committee shall give a written**
 48 **composite score for each qualitative proposal.**

49 **Sec. 4. The public agency shall notify all offerors of the date,**
 50 **time, and location of the public opening of the sealed price**

proposals at least seven (7) days before the opening date.

Sec. 5. The public agency shall publicly open the sealed price proposals and divide each offeror's price by the score that the technical review committee has given to it to obtain an adjusted price.

Sec. 6. The public agency shall accept the proposal that provides the public agency with the lowest adjusted price. The public agency is not required to accept the lowest price proposal.

Sec. 7. The public agency may reject any and all proposals, except for the purpose of evading the provisions and policies of this article. A public agency must make a rejection of proposals under this section in a written document that states the reasons for rejecting proposals.

Sec. 8. (a) The public agency may negotiate any contract term with the offeror selected under section 6 of this chapter, except for those terms identified in the request for proposals as nonnegotiable.

(b) If the public agency is unable to negotiate a contract with its first selection, the public agency may:

(1) suspend or end negotiations with that offeror; and

(2) negotiate with the next lowest adjusted price offeror.

A public agency shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

Sec. 9. (a) Unless and until a proposal is accepted, the drawings, specifications, and other information in the proposal are the property of the offeror.

(b) After a proposal is accepted, ownership of the drawings, specifications, and information in the drawings and specifications shall be determined under Indiana law and the terms of the design-build contract.

Chapter 8. Miscellaneous Provisions

Sec. 1. A design-build contract may be conditional upon subsequent refinements in scope and price and may permit the public agency to make changes in the scope of the project without invalidating the design-build contract.

Sec. 2. (a) A person identified under IC 5-27-7-1 as a person with whom the design-builder proposes to enter into subcontracts for primary design services and primary construction services under the design-build contract may not be replaced without the approval of the public agency.

(b) If a design-builder violates subsection (a), the public agency may cancel the award of a design-build contract.

Sec. 3. After award, the maximum cost established in the successful proposal may be adjusted by negotiated agreement between the public agency and the design-builder to reflect modifications in the proposed design-build project.

Sec. 4. (a) The public agency shall require the design-builder to furnish performance and payment bonds for the project.

(b) A performance or payment bond is not required for, and

1 does not provide coverage for, the part of a design-build contract
2 that includes design services only.

3 (c) Subsection (b) does not impair the public agency's ability to
4 seek recovery under the contract from the design-builder for
5 errors, omissions, or defects in the design services.

6 Sec. 5. A public agency may not, with respect to a public project
7 covered by this article, require an offeror to:

8 (1) make application to;

9 (2) furnish financial data to; or

10 (3) obtain any of the surety bonds, or surety bond components
11 of wrap-up insurance, that is specified in connection with a
12 design-build contract or specified by any law from;
13 any particular insurance or surety company, agent, or broker.

14 Sec. 6. (a) Construction services provided pursuant to design-
15 build contracts are subject to IC 5-16-7. Prior to the issuance of a
16 request for proposals under IC 5-27-6 to the potential design-
17 builders, the public agency shall convene a committee under
18 IC 5-16-7-1 for the purpose of establishing the common
19 construction wage for the public project. The scale of wages
20 established by the common construction wage committee shall be
21 made a part of the request for proposals.

22 (b) Any contract negotiated with the successful design-builder
23 shall contain a term mandating the payment of common
24 construction wages to all construction services workers on the
25 public project.

(Reference is to SB 24 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Public Policy.

GARTON

Chairperson